THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT APPEAL No.448 of 2004

10 October 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 21.01.2004 in W.P.No.3219 of 1994 on the file of the High Court)

Between:

The Management of NTPC 400 KV Sub-Station,
Ghanapuram Village, Ghatkesar Post, RR District,
Represented by its General Manager and another.

.. Appellants.

And

The Presiding Officer, Industrial Tribunal,
Hyderabad-II, Hyderabad and another.

.. Respondents.

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JUDGMENT: (Per Hon'ble Sri Justice B.Prakash Rao)

The appellants, who are the Management and un-successful writ petitioners, seek to assail in this appeal the order dated 21.01.2004 in W.P.No.3219 of 1994 of the learned single Judge dismissing the writ petition filed by them in W.P.No.3219 of 1994 dated 21.01.2004 wherein, *inter alia,* sought to assail the award of the first respondent herein in I.D.No.19 of 1992, dated 23.09.1993.

Heard Sri A.T.M. Ranga Ramanujam, learned counsel appearing for the appellants and Sri B. Narasimha Sharma, learned counsel appearing for the contesting respondent.

Briefly stated the facts of the case as arising in the present case are that the second respondent herein which is a Union with the appellants herein raised a dispute in regard to the termination of services of 9 workmen and in pursuance of the conciliation proceedings, the matter was referred to the Government and in turn the Government referred the matter to the first respondent under Section 10 of the Industrial Disputes Act, 1947 (for brevity 'the Act') on the

question as to “whether the management of NTPC, 450 KV Sub-station, Ghanapuram Village Ghatkesar, R.R. District is justified in terminating the services of the 9 workmen”. On such reference, the matter was taken up by the first respondent as I.D.No.19 of 1992 which was enquired into and ultimately held that such termination is contrary to Section 25 of the Act. During the course of enquiry, though several objections have been raised in regard to the very correctness of the reference and also in support of the action taken against such workmen, the same was not found favour and ultimately the Award was passed in favour of the employees. Challenging the same, the appellants herein filed the present Writ Petition, *inter alia,* raising several questions and especially to the effect that the second respondent i.e., the Union has no due representative capacity nor any *locus standi* and secondly that the said workmen are not the workmen of the appellants since they were engaged through a contractor and lastly that such termination in respect of contract labour cannot be treated as an industrial dispute, therefore, the same is not maintainable.

The learned single Judge having considered these submissions and the contentions as urged on behalf of the second respondent through its counsel in support of the award, has held that in regard to the first objection since the same was not raised before the Industrial

Tribunal, the same cannot be allowed to be taken at this belated point of time and in regard to the other two points are concerned, the said workmen are directly working under the appellants-management and therefore, the award of the Tribunal does not warrant any interference. Having regard to the findings which are arrived at on appreciation of both oral and documentary evidence produced before it, nothing has been shown by the appellants to say that such findings are perverse or illegal.

In this appeal, apart from the other questions as urged on merits, the appellants have filed an application in W.P.M.P.No.4520 of 2005, *inter alia,* seeking to produce a letter dated 09.03.2005 issued by the Government of India, Ministry of Labour and Employment , letter No.23(1) 2003-L.S.III, memorandum of association and articles of association of its own apart from the letter dated 10.12.2003 issued from the Ministry of Power, Government of India, communicating administrative approval for expenditure for the construction of Transmission System and associated lines. These documents are sought to be filed for additional evidence especially pressing into service the plea that they would clearly show that the appellants Company squarely falls well within the purview of the Central Government but not under the State Government and therefore the

very reference itself is bad.

Having heard the counsel on either side and on perusal of the material available on record apart from the questions on merits, the aspect of very competence of the reference as sought to be pressed into service requires to be gone into more aptly. There is no serious dispute nor any challenge as to the aforesaid documents filed on behalf of the appellants herein through the said application. Since these documents would amply have bearing on the question as to the very competence of the reference as made by the State Government in regard to the appellants which states that its controlling authority is only Central Government and especially the said documents are only the public documents, the application is allowed.

Having taken into consideration the aforesaid plea as raised by the appellants, the question which arise for consideration is as to the whether the appropriate Government as contemplated under Section 2(a) of the Acts as per the appellants concerned is the Central or the State Government ?

There is no dispute to the aforesaid chequered events, which led to the reference and ultimately the award was passed at the instance as sought to be raised by the second respondent. The conciliation proceedings and also the reference made was admittedly the State Government. Even the conciliation proceedings were also

initiated by the second respondent only before the Authorities concerned with the State Government. However, the above letter dated 09.03.2005 clearly shows that on an enquiry made by a letter dated 02.09.2004 on the subject as to whether the appropriate Government for the establishment of Power Grid Corporation of India Ltd., under the provisions of the Industrial Disputes Act, 1947 would be Central or State Government has been examined and it has been decided in consultation with the Ministry of Labour and Employment, Government of India that the Central Government would be the 'Appropriate Government' in respect of Power Grid Corporation of India Ltd., under Section 2(a) of the Industrial Disputes Act, 1947. In view of the same, it follows as per the appellant is concerned it is only a Power Grid Corporation of India, the appropriate Government as contemplated under Section 2(a) of the Act is only the Central Government but not the State Government. Therefore, in the present case, since the reference has been made and the entire proceedings have been initiated by the authorities under the State Government and not by the Central Government, it only follows that the very reference automatically gets vitiated and wholly become incompetent. During the course of arguments, the learned counsel appearing on behalf of the appellants pointed out that the notification issued in the Gazette of

India, dated 31.12.1998 which has been published under Sub-section (1) of Section 27A of the said Act to the effect that the Central Government specifies the power Grid Corporation of India being Government Company.

However, having regard to the fact that these documents are being filed with the plea which in fact goes to the very root of the case and takes away the very jurisdiction of the State Government in entertaining any such conciliation or making a reference as such in respect of the appellant Corporation for the appropriate Government being the Central Government and with a view to give an opportunity to the respondent No.2 herein to properly rebut the same and to enable the first respondent herein to go into such question and consider the same on a re-appreciation thereof. We deem it more appropriate and the ends of justice, the matter is remitted for fresh consideration and disposal.

The appeal is allowed. The judgment of the learned single Judge dated 21.01.2004 in W.P.No.3219 of 1994 and the award dated 23.09.1993 of the first respondent in I.D.No.19 of 1992 are set aside and the matter is remitted to the first respondent herein for fresh consideration and disposal on merits after giving opportunity to both the sides. No costs.

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B. PRAKASH RAO, J

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P.S. NARAYANA, J

10th October 2006.
Chvn.